

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.796/Mum/2023
(निर्धारण वर्ष / Assessment Year: 2012-13)

Madan Mohan Mishra R. 80 TTC, Industrial area MIDC, Rabal, Navi Mumbai-4000701.	बनाम/ Vs.	Income Tax Office- 10(3)(3) Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPM3701B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri S. L. Jain	
Revenue by:	Shri Dharmvir D Yadav (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 26/06/2023
घोषणा की तारीख /Date of Pronouncement: 14/07/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-17, Mumbai dated 29.12.2017 for AY. 2012-13.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the addition made u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act") of Rs.22,70,610/- which assessee claims to be agricultural income and disallowance of Rs.36,967/- as expenses.

3. Brief facts as noted by the AO is that the assessee had filed return of income declaring total income at Rs.14,93,823/-. Later, the case of the assessee was selected for scrutiny, and the AO noted that the assessee had shown agricultural income of Rs.38,01,400/- which was claimed as exempt income. However, according to AO, the assessee failed to prove that he had earned exempt/agricultural income



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of Rs.22.70 Lakhs. According to AO, the assessee failed to give the minimum basic details of the agricultural income i.e. what crops assessee has cultivated etc. However, according to the assessee, the agricultural property on which cultivation was carried out was purchased by assessee along with three (3) others, and they purchased 68 acres (27.53 Hectors) of agricultural land vide agreement dated 28.04.2006 and 16.11.2007. And has claimed to have received total amount of Rs.99.14 lakhs and estimated expenses at Rs.8,31,617/- [and assessee claimed ¼ share of it]. According to the AO, no relevant evidencing were filed to prove the fact of the assessee has earned agricultural income viz. No details like (i) Talati register (ii) transporter bill/lorry receipt/road challan/labor charges for transportation (iii) details of expenses relating to agricultural activity and supporting and (iv) bills for agricultural produces etc. According to the AO, since no relevant details as directed by him, were furnished, he disallowed Rs.22.70 Lakhs claimed by assessee as exempt income and also expenses to the tune of Rs.36,967/- and made addition of Rs.22,70,610/- u/s 68 of the Act. On appeal, Ld. CIT(A) also noted that the assessee failed to furnish the relevant documents to support the claim of earning 1/4th of Rs.99.14 Lakhs i.e. Rs.22,70,610/-. Therefore, the Ld. CIT(A) confirmed the action of the AO making addition u/s 68 of the Act of Rs.22,71,610/- and expenses disallowed of Rs.36,967/-. Aggrieved, the assessee is before this Tribunal.



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4. I have heard both the parties and perused the records. The assessee brought to my notice the averment made by AO/Ld. CIT(A) that assessee failed to file relevant documents to support the claim of earning agricultural income, which fact, according to Ld AR is incorrect/false. According to him, assessee along with three (3) others (co-owners) had purchased 68 acres (27.53 hectares) of agricultural land in the year 2006 & 2007 (supra) and in this year, earned agricultural income from the said land (Total Rs.99.14 Lakhs) has claimed 1/4th share as his exempt income to the tune of Rs.22,70,610/-. In order to support the claim of agricultural income earned by him (assessee) has filed three (3) paper books. However, despite that AO has disallowed the claim of agricultural income. He also brought to our notice the fact that for earlier year ie. AY. 2009-10, one of the co-owners return of income was taken for scrutiny [i.e. Smt. Usha Mishra (wife of Shri Umesh A. Mishra)] wherein the agricultural income earned by her to the tune of Rs.17,78,820/- was accepted by the AO. Likewise, according to the assessee, for the AY. 2007-08 in the case of Shri Umesh A. Mishra, the AO had accepted the agricultural income of Rs.14,34,785/- (refer page no. 24 PB and page no. 26 and 27 of PB). Thus, according to the Ld. AR, when the land purchased by assessee along with co-owner has undergone scrutiny assessment, and the agricultural income accepted in their hands, the action of the AO in discarding those relevant facts as well as paper books filed by the assessee is perverse, and the Ld. CIT(A) has also not considered the relevant material placed on record. Therefore, he pleads that since



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AO/Ld. CIT(A) has not examined/appreciated that assessee has earned agricultural income by ignoring the relevant facts filed before them as is evident from the assessment order, he prays that another opportunity be given to the assessee to place everything before AO. Per contra, the Ld. DR opposed the plea of assessee for remand back to the AO on the plea that second inning should not be given to the assessee and he pleaded that we should not interfere with the action of Ld. CIT(A).

5. Having heard both parties, we find that the assessee is co-owner of immovable property along with three (3) persons and they had purchased the agricultural land [68 acres (27.53 hectares)] in FY. 2006-07 and claims to be 1/4th owner of the same. According to the assessee, every year the assessee has been showing the agricultural income which fact has been accepted by department/AO in earlier years. The Ld. AR has drawn our attention to assessment order passed in case of co-owner (Smt. Usha Mishra) for AY. 2009-10 as well as that of Shri Umesh K. Mishra for AY. 2007-08 wherein the AO has accepted the agricultural income shown by assessee. According to the assessee, when AO has accepted the agricultural income in the hands of two (2) of the co-owners and assessee also own 1/4th of the same land, different treatment should not be made against the assessee. Therefore, according to the assessee, the facts found (agricultural income) in this assessment year (AY. 2012-13) also ought to have been allowed. However, the Ld. DR pointed out that the AO had made similar addition in the case of co-owner Shri Umesh K. Mishra, and the Tribunal (ITA.No. 4620/Mum/2019, for AY. 2012-13) had dismissed



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the appeal in the case of Shri Umesh K. Mishra vide order dated 12.05.2022. Countering such a submission, the Ld. AR, pointed out that the order has been recalled by the Tribunal being ex-parte order vide order dated 23.05.2013 in MA. No.195/Mum/2023 in ITA. No.1848/Mum/2018 which we note was for AY. 2011-12. And that the appeal has been fixed for hearing on 27.06.2022 before 'F' Bench. Be that as it may, the facts remains that for two earlier years, agricultural income of co-owners have been accepted by the department as noted (supra). Therefore, I am of the opinion that the assessee ought to be given one more opportunity to place relevant evidence to prove that he has earned agricultural income to the tune of Rs.22,70,610/-. Therefore, relying on the decision of the Hon'ble Supreme Court in the case of **Tin Box Company Vs. CIT (249 ITR 216) (SC)**, wherein it was as under: -

" It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :

"We will straightway agree with the assessee's submission that the ITO had not given to the assessee proper opportunity of being heard. " That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of setting out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.



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2. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"

In our opinion, there can only be one answer to this question which is inherent in the question itself: in the negative and in favour of the assessee.

3. The appeals are allowed. The order under challenge is set aside. The assessment orders, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforesaid. No order as to costs."

6. I set aside the issue back to the file of the AO to denovo to adjudicate the issue of assessee earning agricultural income to the tune of Rs.22,70,610/- and also regarding the expenses. The assessee is directed to file relevant documents called for by the AO to prove the fact of earning agricultural income to the tune of Rs.22,70,610/- and the expenses claimed as deduction. And AO to decide the question of fact [whether assessee has earned agricultural income or not] by ignoring any observations made by me (supra) and it is made clear that I have not expressed anything on merits of the addition/disallowance.



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And AO to decide the issue denovo in accordance to law after hearing the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 14/07/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14/07/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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